



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON, D.C. 20370-5100

TJR
Docket No: 4143-00
7 December 2000

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) 10 U.S.C. 1552
(b) Woods v. Secretary of Defense, No. 77-0684
(D.D.C. Aug. 25, 1980)

Encl: (1) DD Form 149 with attachment
(2) Case summary
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the United States Marine Corps, filed enclosure (1) with this Board requesting, in effect, that his naval record be corrected to show a more favorable type of discharge than the undesirable discharge issued on 26 January 1961.

2. The Board, consisting of Ms. Davies, Mr. Neuschafer, and Mr. Whitener, reviewed Petitioner's allegations of error and injustice on 5 December 2000 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations, and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Although it appears that enclosure (1) was not filed in a timely manner, it is in the interest of justice to waive the statute of limitations and review the application on its merits.

c. Petitioner enlisted in the Navy on 31 October 1956 and served without disciplinary incident. On 31 October 1959 he was honorably released from active duty. At this time his conduct average was 4.1.

d. On 7 September 1960 Petitioner was convicted by civil authorities of larceny and sentenced to confinement for 1-5 years.

e. On 24 October 1960 Petitioner was notified of pending administrative separation action by reason of misconduct due to civil conviction.

f. On 27 December 1960, while Petitioner was serving in the inactive reserves, his officer in charge recommended he be issued an undesirable discharge by reason of civil conviction.

g. Subsequently, on 12 January 1961, the discharge authority approved the foregoing recommendation and on 26 January 1961 Petitioner was so discharged.

h. Petitioner contends in his application that his undesirable discharge was based on one incident that happened after he had served on active duty.

i. Reference (b) involved plaintiffs who were members of the inactive reserve, i.e., they had no military obligations other than to keep the military informed of their current addresses. Reference (b) holds that the issuance of an undesirable discharge for civil misconduct when applied to inactive reservists exceeds the military's authority. Reference (b) remanded the cases involved requiring application of the following principles:

(1) an undesirable discharge can only be based on conduct found to have affected directly the performance of military duties,

(2) a general discharge can only be based upon conduct found to have had an adverse impact on the overall effectiveness of the military, including military morale and efficiency, and

(3) when the proper grounds do not exist for the issuance of a less than honorable discharge, an honorable discharge should be issued.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action.

Given the holding of reference (b), the Board concludes that in the cases of reserve members of the Naval Service who are in an inactive status, i.e., they do not perform inactive duty training with the Naval or Marine Corps Reserve, upon civil conviction and the determination to administratively separate them, they should be discharged from the Naval Service with the type of discharge warranted by their service records without regard to the fact of their civil conviction or the circumstances surrounding it. This is so since their civil convictions do not have an adverse effect on the overall effectiveness of the military or military morale and efficiency. Accordingly, Petitioner's discharge should not be less than the fully honorable characterization he received for his period of active duty.

In view of the foregoing, the Board finds the existence of an injustice warranting the following partial corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was issued an honorable discharge by reason of misconduct on 26 January 1961 vice the undesirable discharge actually issued on that date.

b. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

c. That, upon request, the Veterans Administration be informed that Petitioner's application was received by the Board on 13 June 2000.


4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder



ALAN E. GOLDSMITH
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulation, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy



W. DEAN PFEIFFER
Executive Director